

REGISTRATION OF  
VOTERS:

For the purpose of registration of voters,  
the 1950 decennial census becomes effective  
January 1, 1951.

June 20, 1950

6/21/50



Mr. John M. Cave  
Prosecuting Attorney of  
Callaway County  
Courthouse  
Fulton, Missouri

Dear Sir:

Your recent request for an official opinion has been assigned  
to me to answer. You thus state your request:

"Enclosed you will find a copy of a letter  
received by Mr. Frazier Baker, City Attorney  
of Fulton, Missouri.

"The opinion of your office is hereby requested  
on the following question:

"Is Article 19, R. S. of Missouri for  
1939, as amended, now effective as to  
the City of Fulton, and if not effective  
now when does it become effective?

"Your prompt attention in this matter will be  
greatly appreciated in view of the Statutory  
requirements for registration and the approach  
of the Primary election."

Senate Revision Bill No. 1001, of the 65th General Assembly of  
Missouri, now effective, Section 1.10, states:

"The population of any political subdivision  
of the state for the purpose of representation  
or other matters including the ascertainment of

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the salary of any county officer for any year or for the amount of fees he may retain or the amount he shall be allowed to pay for deputies and assistants shall be determined on the basis of the last previous decennial census of the United States. For the purposes of this section the effective date of the 1950 decennial census of the United States shall be January 1, 1951, and the effective date of each succeeding decennial census of the United States shall be on January 1, of each tenth year after 1951."

From the above it will be seen that the effective date, in the State of Missouri, of the 1950 decennial census, is now January 1, 1951, for all purposes, inasmuch as the section quoted above contains the all-embracing phrase: "The population of any political subdivision of the state for the purpose of representation or other matters \* \* \* shall be determined\* \* \*." Certainly this would include and apply to the registration of voters in those municipalities where by statute registration is required when on the basis of the census the population reaches a certain point, if these municipalities are political subdivisions.

Article 19, R. S. Missouri 1939, has been largely amended by House Revision Bill No. 2052 of the 65th General Assembly of Missouri.

Section 114.01 of that bill states:

"In all cities of this state, whether organized under general law or special charter; which now or hereafter have a population of 10,000 and less than 30,000 inhabitants, except cities in counties where registration is now provided by law, there shall be a registration of all the qualified voters pursuant to the provisions of this chapter. The population of cities within the state shall for the purposes of this chapter be ascertained from and determined by the last federal decennial census."

We note from the letter attached to your opinion request that the City of Fulton, on the basis of a report from the district supervisor of the census of the district in which the City of Fulton is located, now has a population of over 10,000 and less than 30,000.

We must now determine whether the City of Fulton is a "political subdivision of the state" within the meaning of Section 1.10 of Senate

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Revision Bill No. 1001 quoted above.

In this connection we would direct your attention to the case of State v. Ferguson, 65 S. W. (2d) 97, where the Supreme Court of Missouri was interpreting the provisions of Section 13 of Article 14 of the Constitution of 1875, which section provided as follows:

"Any public officer or employee of this State or of any political subdivision thereof who shall, by virtue of said office or employment, have the right to name or appoint any person to render service to the State or to any political subdivision thereof, and who shall name or appoint to such service any relative within the fourth degree, either by consanguinity or affinity, shall thereby forfeit his or her office or employment."

Said l. c. at page 99:

"Is a city of the third class a political subdivision? A standard work on municipal corporations so defines it in the following language: 'A municipal corporation, in its strict and proper sense is a body politic and corporate constituted by the inhabitants of a city or town for the purposes of local government thereof. Municipal corporations as they exist in this country are bodies politic and corporate of the general character above described, established by law as an agency of the State to assist in civil government of the country, but chiefly to regulate and administer the local or internal affairs of the city, town or district which is incorporated.' Dillon (5th Ed.) vol. 1, Section 31.

"Section 47 of article 4 of the original Constitution, prohibiting the lending of credit, refers to counties, cities, towns, or townships as 'political corporations or subdivisions of the State.'

"We approve the following observations made in Kinney v. City of Astoria, 108 Or. 514, 528, 217 P. 840, 845: 'Pure municipal corporations, such

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as cities, are merely instrumentalities of the state, established for the convenient administration of local government; they are state governmental agencies; they are auxiliaries of the state for the purpose of self-government; they are mere political subdivisions of the state created by authority of the state for the purpose of exercising a part of its powers."

The framers of the Constitution of Missouri said concerning Article X of such constitution, in Section 15:

"Definition of 'Other political subdivision.' - The term 'other political subdivision' as used in this article, shall be construed to include townships, cities, towns, villages, schools, road, drainage, sewer and levee districts and any other public subdivision, public corporation or public quasi-corporation having the power to tax."

We would also direct your attention to an official opinion rendered by the Attorney General, dated August 9, 1946, to the Honorable G. H. Bates, State Collector of Revenue, the conclusion of which was:

"In the premises, we are of the opinion that the proper definition of the term 'other political subdivision' as found in subsection 10 of Section 39, Article III, of the Constitution of 1945, is that which is found as Section 15 of Article X of the Constitution of 1945, and that such term as so defined must be construed to include townships, cities, towns, villages, school, road, drainage, sewer and levee districts, and any other public subdivision, public corporation or public quasi-corporation having the power to tax. We, therefore, hold that the use, purchase or acquisition of property paid for out of the funds of any township, city, town, village, school, road, drainage, sewer or levee district, or of any other public subdivision, public corporation or public quasi-corporation having the power to tax, is not subject to a use or sales tax by the State."

We are aware of the holding by the Supreme Court of Missouri that a city is not a political subdivision of the State as such

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term is used in Section 3, Article V, of the Constitution of Missouri, relative to the appellate jurisdiction of the Supreme Court.

The Supreme Court in the case of Parker v. Zeisler, 139 Mo. 298, said with regard to Section 12, Article VI, Constitution of 1875, which insofar as this question is concerned is unchanged as Section 3, of Article V, of the present Constitution, l. c. 300:

"We are most positively of the opinion that it is our duty to adhere to the rulings announced heretofore, holding that a city within a county is not a political subdivision of the State (as that term is used in the section of the Constitution under review)."

(Emphasis ours).

We believe that the holding that a city is not a political subdivision in this State is limited only to the provisions of Section 3, of Article V, of the Constitution, and that the reference in Section 1.10 of House Bill 1001 to political subdivisions includes cities.

It is therefore the opinion of this office that the City of Fulton is a political subdivision within the meaning of Section 1.10 of Senate Revision Bill 1001 quoted by us above.

#### CONCLUSION

It is the opinion of this department that Article 19, R. S. Mo. 1939, as amended by House Revision Bill No. 2052 of the 65th General Assembly of Missouri, applies to the City of Fulton, Missouri, and that its effective date is January 1, 1951.

Respectfully submitted,

HUGH P. WILLIAMSON  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

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